Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Federal-State Joint Board On		)
Jurisdictional Separations Seeks	)	CC Docket No. 80-286
Comment On Communications	)	ET Docket No. 04-295
Assistance For Law Enforcement		)
Act (CALEA) Issues	)	

Released: March 2, 2005

Comments Of:

Fred Williamson and Associates, Inc. ("FW&A")

April 1, 2005

I. BACKGROUND AND SUMMARY OF COMMENTS

Fred Williamson and Associates, Inc. (FW&A) is a consulting firm that serves rural Local Exchange Carriers (LECs) located primarily in Kansas and Oklahoma. The rural LECs represented by FW&A serve rural study areas ranging in size from approximately 800 access lines to over 16,000 access lines. These rural LECs will be impacted by any changes to the jurisdictional separations rules that are recommended by the Joint Board and adopted by the FCC. Fred Williamson and Associates, Inc. respectively submits these Comments pertaining to the jurisdictional allocation of Communications Assistance Law Enforcement Act (CALEA) related costs.

The Public Notice seeks comment regarding the jurisdictional separations treatment of costs associated with CALEA compliance. In response to the Public Notice[1], FW&A respectively submits these comments that support the following: 1) Changes to the existing separations rules for allocation of CALEA costs are unnecessary and inappropriate until the Joint Board addresses the current separations freeze;

2) Application of the existing separations rules provides for reasonable jurisdictional allocations of CALEA costs; 3) If required or necessary, the current separations rules allow the direct assignment of costs to the

[1] Public Notice, DA 05-535, Federal-State Joint Board On Jurisdictional Separations Seeks Comment On Communications Assistance For Law Enforcement Act (CALEA) Issues, CC Docket No. 80-286, ET Docket No. 04-295, Released March 2, 2005 (Public Notice)

appropriate jurisdiction. Additionally, these comments provide additional information that responds to specific questions contained in the Public Notice.

II. COSTS ASSOCIATED WITH CALEA COMPLIANCE

The Joint Board seeks comment on "[w]hat equipment, investment, and other costs (including expenses) can or should be considered related to CALEA compliance." [2] Several of FW&A's client companies have implemented CALEA compliance in (circuit-based) switching products. The capital costs that clients have incurred to ensure CALEA compliance range from expenditures of a few thousand dollars to amounts in excess of $100,000. While vendors have information regarding the costs of CALEA compliance, often other upgrades to the switching processor are necessary before CALEA capability can be added. While these upgrades enable the switch to employ other features and functions, they are absolutely necessary to ensure CALEA compliance. Consequently, not all of the costs associated with implementing CALEA can be directly identified. Thus, if CALEA costs must be separately categorized for jurisdictional allocation purposes, it could be necessary to employ an allocation of the costs of other switching upgrades necessary to implement CALEA compliance. Based on discussions that FW&A had with its clients and consulting engineers, cost information regarding the implementation of CALEA compliance for a packet switching platform is not available. Thus, it is possible that implementation of CALEA costs for a packet switching platform could be significant.

---

[2] Id. Para. 5.a.

Most, if not all of the capital costs associated with CALEA compliance are for local switching equipment and are included in account 2210, Central Office Switching.[3] For companies such as FW&A's clients, these investments for jurisdictional cost allocation purposes are assigned to Separations Category 3, Local switching equipment.[4] With regard to expenses related to CALEA, those related to capital investments such as depreciation and property taxes can be attributed to the associated CALEA investments, but are not typically separately tracked in telephone companies' accounting systems. While there are other expenses that may be attributable to CALEA compliance, these expenses typically would not be significant.

III. RECOMMENDED JURISDICTIONAL SEPARATIONS TREATMENT OF CALEA RELATED COSTS

The existing separations rules are sufficient for providing a reasonable jurisdictional allocation of CALEA compliance costs. Changes to these rules for the jurisdictional allocation of CALEA related costs are unnecessary and would require that the Joint Board consider broader changes to the rules

[3] See C.F.R. 47, Section 32.210

[4] See C.F.R. 47, Section 36.125. This assumes that the company was not required nor elected to freeze its jurisdictional separations categories, as of December 31, 2000. If categories were frozen, CALEA related costs would be assigned to the Central office separations categories based on the percentage relationships of categorized COE investments as of December 31, 2000. Price Cap LECs were required to freeze the separations category relationships. For rate-of-return regulated carriers, the category freeze was optional. Price Cap carriers were the primary class of LECs impacted by the category freeze. Since Price Cap LECs' Interstate rates are not tied to Interstate revenue requirements, the jurisdictional separations rules do not directly affect cost recovery levels. Any possible changes in the jurisdictional separations rules will primarily affect recovery amounts for rate-of-return LECs.

related to the separations freeze. For instance if it is decided to categorize CALEA separately, should companies be required to depart from frozen separations category relationships, if they have elected to freeze categories? Until broader separations reform is addressed, including the current freeze that is effective, it is piecemeal and premature to adjust the rules for jurisdictional allocation of CALEA related costs.

For most rural LECs that are directly impacted by the separations rules, the existing rules provide a reasonable jurisdictional allocation of costs. As stated previously, the CALEA related costs consist predominantly of capital expenditures for upgrades of central office local switching equipment. These costs are primarily included in Category 3 Local Switching Equipment and jurisdictionally apportioned on the basis of DEM or Weighted-DEM, in the case of rural LECs (serving study areas with less than 50,000 lines).[5] Although the DEM factors have been frozen pursuant to FCC orders, it still reflects relative levels of jurisdictional usage of the switch. With regard to the DEM weighting factor, this allocation, which is a multiple that ranged from two to three times DEM, offset the higher costs per line that are associated with serving rural areas and these costs are assigned to the Federal Universal Service Fund for recovery. Depreciation expenses, associated with central office switching investments are jurisdictionally

[5] See C.F.R. 47, Section 36.125(f).

assigned based on "of the associated primary Plant Accounts or related categories." [6] Consequently, for rural LECs, unless direct assignments are made, a significant portion of local switching and CALEA related costs are recovered from Interstate services and Federal Universal Service Support funds.

If CALEA costs and possible recovery mechanisms are directly identifiable, the Part 36 jurisdictional separations rules allow the direct assignment of costs to the appropriate jurisdiction. Specifically, Section 36.1(c) of the rules states:

> The fundamental basis on which separations are made is the use of telecommunications plant in each of the operations. The first step is the assignment of the cost of the plant to categories. The basis for making this assignment is the identification of the plant assignable to each category and the determination of the cost of the plant so identified. The second step is the apportionment of the cost of the plant in each category among the operations by direct assignment where possible, and all remaining costs are assigned by the application of appropriate use factors. *(emphasis added)*

The ability to direct assign costs was not impacted by the separations freeze. Section 36.3(a) clearly indicates that direct assignment of costs is still permitted despite the separations freeze:

> Effective July 1, 2001, through June 30, 2006, all local exchange carriers subject to Part 36 rules shall apportion costs to the jurisdictions using their study area and/or exchange specific separations allocation factors calculated during the twelve month period ending December 31, 2000, for each of the categories/sub-categories as specified herein. Direct assignment of private line service costs between jurisdictions shall be updated annually. Other direct assignment of investment, expenses, revenues or taxes between

[6] See C.F.R. 47, Section 36.361(b)

jurisdictions shall be updated annually. … *(emphasis added)*

Consequently, if it is determined by the FCC or the Joint Board that direct assignment of CALEA related costs is desirable or if a carrier implementing CALEA desires to direct assign costs, this is already permitted under the existing rules. If direct assignment is an approach that is taken by a carrier, these costs most likely should be directly assigned to the Interstate jurisdiction, since CALEA is a Federal mandate. FW&A supports that direct assignment of CALEA related costs should be left to the discretion of the carrier, since it is possible that some states may allow recovery of CALEA costs in the Intrastate jurisdiction.

Rather than modify the separations rules for CALEA at this time, it seems reasonable that modifications to the Separations rules should not be made until the Joint Board and FCC have addressed rules that will be effective after the expiration of the freeze. The jurisdictional allocation of CALEA costs is insignificant in comparison to the potential impact of comprehensive separations reform that may be implemented after expiration of the freeze. There does not seem to be a compelling reason to modify the jurisdictional allocations of CALEA related costs at this time. If comprehensive separations reform is pursued, the Joint Board may want to examine the allocation of CALEA costs at that time, especially if compliance is determined to be costly for packet switching platforms.

IV. SUMMARY AND RECOMMENDATIONS

- For existing switches, the costs of CALEA compliance may or may not be significant depending on circumstances of the LEC that is implementing CALEA.

- Changes to the existing separations rules for allocation of CALEA costs are unnecessary at this time.

- Application of the existing separations rules provides for reasonable jurisdictional allocations of CALEA costs

- If required or necessary, the current separations rules allow the direct assignment of CALEA related costs to the appropriate jurisdiction. Direct assignment of CALEA costs should be left to the carrier's discretion.

- If comprehensive separations reform is pursued, the Joint Board may want to examine the allocation of CALEA costs at that time, especially if compliance is determined to be costly for packet switching platforms.

Respectfully submitted by,

Paul L. Cooper
Director of Operations, Fred Williamson & Associates, Inc.
2921 East 91st Street, Suite #200
Tulsa, OK. 74137-3355
Telephone: (918) 298-1618